

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-01-DV-444
)	NAL/Acct. No. 200232800006
Mount Rushmore Broadcasting, Inc.)	FRN 0005-0081-23
)	
Licensee, Station KAWK(FM))	
Custer, South Dakota)	
Facility ID #43916)	

MEMORANDUM OPINION AND ORDER

Adopted: October 1, 2003

Released: October 3, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we deny the petition for reconsideration filed by Mount Rushmore Broadcasting, Inc., (“Mount Rushmore”). Mount Rushmore seeks reconsideration of the *Forfeiture Order*¹ in which the Chief, Enforcement Bureau (“Bureau”), found it liable for a monetary forfeiture in the amount of \$10,000 for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves Mount Rushmore’s unlicensed operation of a studio to transmitter (“STL”) link.

II. BACKGROUND

2. Mount Rushmore is the licensee of Station KAWK(FM), Custer, South Dakota. On April 6, 2001, an agent from the Commission’s Denver, Colorado, District Office (“Denver Office”) inspected Station KAWK-FM. During the inspection the agent observed, among other things, that Mount Rushmore was operating an STL on frequency 951.0 MHz. A check of the Commission’s license records indicated that the STL was unlicensed.

3. On January 7, 2002, the Denver Office issued Notice of Violation (“NOV”) to Mount Rushmore for the unlicensed operation and other violations detected during the inspection. In its response to the NOV, filed on November 29, 2002, Mount Rushmore stated that it had applied for authorization to operate the STL.³

4. On May 31, 2002, the District Director of the Denver Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)⁴ in the amount of \$10,000 for willful violation of Section 301 of the Act.

¹ 17 FCC Rcd 21398 (Enf. Bur. 2002).

² 47 U.S.C. § 301.

³ According to the Commission’s license records, subsequent to the inspection and issuance of the NOV Mount Rushmore obtained a temporary STL authorization, WPUJ485, on March 15, 2002. That authorization expired on September 15, 2002. The Commission’s Wireless Telecommunications Bureau returned Mount Rushmore’s application for a full term STL on April 4, 2002, and dismissed it on June 30, 2002, because Mount Rushmore did not refile that application. Mount Rushmore now has no pending application for an STL license.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232800005 (Enf. Bur., Denver Office, released May 31, 2002).

Mount Rushmore did not file a response to the *NAL*. The Bureau's *Forfeiture Order*, released October 29, 2002, affirmed the forfeiture proposed by the *NAL*.⁵ On November 29, 2002, Mount Rushmore filed a petition for reconsideration of the *Forfeiture Order*. Mount Rushmore does not dispute the violation but requests cancellation or reduction of the forfeiture. Mount Rushmore argues that the violation was not willful, that it has corrected the violation and that the \$10,000 forfeiture is "a huge fine for a small operator." On May 15, 2003, Mount Rushmore supplemented a petition for reconsideration filed in another proceeding (EB-01-DV-435) with copies of its 1999, 2000, 2001 federal income tax returns.

III. DISCUSSION

5. Section 312(f)(1) of the Act,⁶ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act,⁷ provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *Nan Tan Computer Co.*, 9 FCC Rcd 3092 (1994). Mount Rushmore knew that it was operating an STL and that it did not have license for that operation. We conclude that Mount Rushmore willfully violated Section 301 of the Act.

6. Mount Rushmore's corrective action does not mitigate its violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁸

7. We have reviewed the financial information provided by Mount Rushmore and we find that this information does not provide a basis for reduction or cancellation of the forfeiture.

8. Since Mount Rushmore still does not have an authorization for operation of the STL, we have no evidence that Mount Rushmore now complies with Section 301 of the Act. Accordingly, we will require, pursuant to Section 308(b) of the Act,⁹ that Mount Rushmore submit a report to the Enforcement Bureau no more than thirty (30) days after release of this *Order* demonstrating how it complies with Section 301 of the Act regarding its use of the STL. Mount Rushmore's report must be submitted in the form of an affidavit signed under penalty of perjury by an officer or director of the licensee.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁰ and Section 1.106 of the Rules,¹¹ Mount Rushmore's petition for reconsideration of the October 29, 2002, *Forfeiture Order* **IS DENIED**.

⁵ 17 FCC Rcd 21398 (Enf. Bur. 2002).

⁶ 47 USC § 312(f)(1).

⁷ 47 USC § 503(b).

⁸ See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002).

⁹ 47 U.S.C. § 308(b).

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

10. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Mount Rushmore must submit the report described in Paragraph 8, no more than thirty (30) after release of this order, to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹² within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232800006 and FRN 0005-0081-23. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

12. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Jan Gray, President, Mount Rushmore Broadcasting, Inc., 218 N. Wolcott St., Caspar, Wyoming 82601.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹² 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.